

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RANDOLFO ALANIZ)	
Claimant)	
)	
VS.)	Docket No. 1,045,557
)	
DILLON COMPANIES, INC.)	
Self-Insured Respondent)	

ORDER

STATEMENT OF THE CASE

Respondent requested review of the October 18, 2012, Award entered by Administrative Law Judge Brad E. Avery. The Board heard oral argument on March 13, 2013. Sally G. Kelsey, of Lawrence, Kansas, appeared for claimant. Edward D. Heath, Jr., of Wichita, Kansas, appeared for the self-insured respondent.

The Administrative Law Judge (ALJ) found that claimant had an 18 percent functional impairment and a 74 percent work disability. Further, the ALJ ordered respondent to pay the bill from Stormont-Vail Health Care (Stormont-Vail) for the psychiatric treatment received by claimant.

The Board has considered the record and adopted the stipulations listed in the Award. The Board has also considered the independent medical examination reports of Dr. Patrick Do and Dr. Edward Prostic.

ISSUES

Respondent asks that the Award be modified to find claimant has a 2 percent impairment to the left upper extremity at the level of the shoulder. Respondent argues that Dr. Prostic's rating opinion should not be utilized because he used the Range of Motion Model rather than the preferred DRE Model and because he failed to meet the statutory requirement for use of the 4th edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. In the event the Board finds claimant proved a compensable injury to the body as a whole, respondent contends claimant failed to prove a task loss. Respondent next argues the ALJ incorrectly applied the retirement benefit offset. Respondent asserts next that the ALJ erred in ordering it to pay the expense of claimant's psychiatric treatment at Stormont-Vail.

Claimant asks the Board to modify the Award and find he had a 76.3 percent work disability based on a 100 percent wage loss and a 52.6 percent task loss. Claimant asks that the Board affirm the Award in all other respects.

The issues for the Board's review are:

1. What is the nature and extent of claimant's disability?
2. Should Dr. Prostic's rating opinion be disregarded because he inaccurately calculated claimant's impairment and/or because he failed to meet the statutory requirement for use of the 4th edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*?
3. Did claimant prove a task loss?
4. Did the ALJ properly apply the retirement benefit offset?
5. Should respondent be ordered to pay the expense of claimant's psychiatric admission to Stormont-Vail?

FINDINGS OF FACT

Claimant, an overnight crew leader for respondent, was injured on March 29, 2009, while helping a coworker pull a bale of cardboard out of a machine. Claimant testified that the bale weighed about 500 pounds, and he felt pain in his left shoulder and neck when he was pulling on the bale. Claimant reported his injury and was sent to treatment. Eventually, Dr. Steven Hendler was authorized as the treating physician for pain management. After the injury, claimant was given a lifting restriction and was unable to perform all his previous job tasks. He was unable to stock shelves because he could not lift heavy cases or bags of product. He would face the stock on the shelves and order groceries using a scanning gun.

Claimant testified that in the summer of 2011 there were days he could not work and at times his pain level was as high as a 9 out of 10. Claimant said when he got off work the morning of August 25, 2011, the store manager and grocery assistant manager threatened to fire him and asked him to resign. Claimant had an appointment that day with Dr. Hendler. Claimant told Dr. Hendler he was in a lot of pain and that his supervisor was asking him to resign or he would be replaced. Claimant told Dr. Hendler he wanted to kill himself. At that point, Dr. Hendler sent claimant to Stormont-Vail, where claimant was admitted and received psychiatric treatment for four days. While at Stormont-Vail, he was started on antidepressant medication. Claimant said he had not been treated for depression before the March 2009 accident.

Claimant continued to work for respondent as an overnight crew leader until he was terminated on December 17, 2011.

Claimant was seen by Dr. Patrick Do on August 15, 2011, at the order of the ALJ. Claimant complained to Dr. Do of pain in the left shoulder and left side of the neck with some numbness and tingling as a result of a March 29, 2009, injury. After examining claimant, Dr. Do diagnosed myofascial cervical thoracic pain and left shoulder pain. Dr. Do believed claimant had impingement and possible rotator cuff pathology in the left shoulder. He did not find claimant to be at maximum medical improvement (MMI) and recommended claimant have arthroscopic surgery. At the time of the examination, claimant had a 25-pound lifting restriction, which Dr. Do believed was appropriate. Dr. Do recommended claimant also limit overhead use of the left shoulder to 33 to 66 percent of the day.

Dr. Douglass Stull, a board certified orthopedic surgeon, initially saw claimant on September 20, 2011. Dr. Stull's primary focus was claimant's left shoulder as it related to the work injury he sustained on March 29, 2009. Claimant had developed an impingement in the left shoulder which arose out of his work injury. Claimant had been treated conservatively by other physicians, and claimant was going to Dr. Stull after those conservative treatments had failed. Dr. Stull performed an arthroscopic subacromial decompression on claimant's left shoulder on October 10, 2011. He found claimant had a labral tear that was not in a location that would be classified as a Bankart repair tear but would be more like a SLAP tear. Claimant's tear was a type one, which meant it was a tear that was not repairable as there was not a bulk of tissue that could be sutured back or tacked back to the native glenoid.

Dr. Stull followed claimant postoperatively and found him to be at MMI on January 17, 2012. Claimant was released to full duty without restrictions on that day. Dr. Stull said that by three months after the surgery, he would not expect a reinjury, which was why he released claimant to full duty at that time. He also did not think it would be reasonable after the surgery that someone would require narcotic pain medication.

Using the *AMA Guides*,¹ Dr. Stull rated claimant as having a 2 percent permanent partial impairment to the left upper extremity, which would correspond to a 1 percent whole person impairment. This impairment was based upon Dr. Stull's measurement of claimant's ranges of motion after surgery. Dr. Stull did not treat or evaluate claimant's cervical spine. He stated that claimant's cervical spine problems had nothing to do with his shoulder complaints.

Dr. Stull reviewed the task list prepared by Dick Santner and said claimant would have a 0 percent task loss. Dr. Stull said there was nothing structural or functional in

¹ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

claimant's shoulder that would explain why claimant could not lift 25 pounds. Dr. Stull's opinion that claimant could perform the tasks on Mr. Santner's list did not reflect the degree of pain claimant might have doing any of the tasks.

Dr. Stull said it would be reasonable for someone to have depression from an injury and surgery. Depending on the circumstances, the depression could be related to an injury.

Dr. Peter Bieri, a certified independent medical examiner, examined claimant on two occasions concerning the March 2009 accident, both at the request of claimant's attorney. On March 25, 2010, claimant complained of persistent pain in the neck and left shoulder made worse with shoulder-level and overhead use. After examining claimant, Dr. Bieri diagnosed him with neck and left shoulder strain. He noted radiographic findings were consistent with disc disease at multiple levels of claimant's neck. Dr. Bieri opined claimant was at MMI and placed him in DRE Cervicothoracic Category II for a 5 percent whole person impairment. He also rated claimant with a 5 percent permanent partial impairment to the left upper extremity for range of motion deficits and a 2 percent impairment to the left upper extremity for pain. He calculated the left upper extremity impairment to be 7 percent, which would convert to a 4 percent whole person impairment. The combined whole person impairment would be 9 percent, which he attributed to claimant's March 2009 work-related accident. Dr. Bieri said the restrictions issued to claimant on March 25, 2010, were to limit shoulder level and overhead use on the left and to limit lifting to 25 pounds.

On February 20, 2012, Dr. Bieri saw claimant again. After Dr. Bieri's examination in 2010, claimant had left shoulder surgery by Dr. Stull. Dr. Bieri said Dr. Stull's operative report was not available to him, but the surgery involved subacromial decompression and a Bankart procedure. Claimant said the additional treatment resulted in no significant change and he continued to have neck pain that radiated into the left shoulder. Claimant also said that as a result of the surgery, he continued to have persistent shoulder pain. In the examination, claimant showed loss of range of motion in the left shoulder and loss of active range of motion of the cervicothoracic spine, accompanied by brief palpable muscle spasm and guarding.

Dr. Bieri felt a new impairment rating was in order. He had previously found claimant had a 7 percent left upper extremity impairment. Dr. Bieri added an additional 10 percent upper extremity impairment for residuals of the Bankart procedure. This combined for a 16 percent permanent partial impairment to the left upper extremity. Dr. Bieri said claimant continued to demonstrate a 5 percent whole person impairment under DRE Cervicothoracic Category II, and claimant's total body as a whole impairment would be 15 percent, which he attributed to the March 2009 accident. Dr. Bieri noted that claimant remained under permanent restrictions to limit lifting to 25 pounds with no shoulder-level and overhead use on the left.

Dr. Bieri reviewed the task list prepared by Dick Santner. Of the 19 tasks on the list, he opined that claimant is unable to perform 10 for a 52.6 percent task loss. Dr. Bieri's task

loss opinions do not reflect an opinion about whether claimant's level of pain can allow him to perform the task. Dr. Bieri believed claimant would need continued pain management as needed.

Respondent's attorney showed Dr. Bieri an examination report generated by Dr. Bieri on April 12, 2006, concerning claimant that had been sent to claimant's attorney. The 2006 report concerned a 2005 workers compensation injury. In 2006, claimant was having complaints in the low back and cervicothoracic spine. In 2006, Dr. Bieri rated claimant as having a 5 percent whole person impairment based on DRE Cervicothoracic Category II of the *AMA Guides*. This was the same category in which he placed claimant when he saw him in 2010 and 2012. Dr. Bieri said claimant was in Category II in 2006 and is in Category II today. Claimant had been released without restrictions in 2006. Dr. Bieri said the restrictions he issued to claimant on March 25, 2010, were limited to shoulder level and overhead use on the left and to limit lifting to 25 pounds. Dr. Bieri said those restrictions were primarily related to the shoulder. The restrictions were the same in the subsequent February 2012 report.

Dr. Bieri was asked about restrictions for claimant's current neck condition. Dr. Bieri said if claimant did not have a shoulder injury, he might still have a medium capacity restriction based solely on the neck injury, which Dr. Bieri articulated as a 50-pound lifting restriction, but claimant's shoulder injury restriction supersedes the restriction for the neck injury.

Q. [by claimant's attorney] Is there a degree to which the second injury to the neck would have made restrictions appropriate for his neck as well?

A. [by Dr. Bieri] Not that I could determine within a reasonable degree of medical certainty. The 25-pound lifting restriction for the shoulder certainly would be consistent with alleviating some type of stress to the neck, so in that instance, it might be helpful, but it wasn't strictly for that.²

In discussing claimant's current neck impairment, Dr. Bieri testified:

A. [by Dr. Bieri] His complaints of pain have certainly increased. Based on what I had, I don't know within a reasonable probability that he meets the definition of increase in the permanent impairment of the cervical spine. If you utilize the DRE model, the next category is one that involves radiculopathy, which he did not have, so by definition despite his complaints of pain he would stay at the 5 percent level.

Q. Is there a different mechanism other than the DRE category that you have to utilize?

² Bieri Depo. at 29.

A. Well, you could use the so-called Range of Motion Model which is not the preferred method. I don't know that that would be accurate in this particular instance.³

When asked about claimant's admission to Stormont-Vail on August 25, 2011, Dr. Bieri stated:

It's my understanding that it is common for people with chronic pain to develop emotional or psychiatric conditions. Suicidal ideation or suicidal attempt is considered almost an emergency condition in many situations and I think anyone who expresses that needs to be evaluated.⁴

Based on claimant's testimony and assuming Dr. Hendler sent claimant to the emergency room, Dr. Bieri believed the treatment was related to claimant's pain.

Dr. Edward Prostic evaluated claimant on May 18, 2012, at the order of the ALJ. Dr. Prostic noted that in 2006, Dr. Bieri had rated claimant as having permanent partial impairment to the whole body of 5 percent for a cervical strain and a 5 percent impairment for a lumbar strain.

Dr. Prostic performed a physical examination of claimant. X-rays were taken. AP and lateral x-rays of claimant's cervical spine showed he had degenerative disc disease at C4 to C7. X-rays of the left shoulder showed generalized demineralization. Glenohumeral arthropathy was not noted. Dr. Prostic opined that claimant sustained injuries to the neck and left shoulder during the course of his employment on March 29, 2009. He recommended a psychometric study prior to any additional physical treatment to see if there are psychological barriers to claimant's improvement.

Dr. Prostic rated claimant as having a 10 percent impairment to the whole body for the cervical spine and a 15 percent impairment to the left upper extremity resulting from the March 2009 accident. Dr. Prostic stated his ratings were in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, but he did not specifically refer to the 4th edition. Dr. Prostic did not believe claimant's difficulties to be the natural progression of the previous disease. He recommended claimant return to medium-level activity with avoidance of use of the left hand above shoulder level or awkward postures of the neck.

³ Bieri Depo at 30-31.

⁴ Bieri Depo. at 10.

PRINCIPLES OF LAW

K.S.A. 2008 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends." K.S.A. 2008 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

K.S.A. 2008 Supp. 44-510h(a) states:

It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515 and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

K.S.A. 44-510d(a) states in part:

(a) Where disability, partial in character but permanent in quality, results from the injury, the injured employee shall be entitled to the compensation provided in K.S.A. 44-510h and 44-510i and amendments thereto, but shall not be entitled to any other or further compensation for or during the first week following the injury unless such disability exists for three consecutive weeks, in which event compensation shall be paid for the first week. Thereafter compensation shall be paid for temporary total loss of use and as provided in the following schedule, 66 2/3% of the average gross weekly wages to be computed as provided in K.S.A. 44-511 and amendments thereto, except that in no case shall the weekly compensation be more than the maximum as provided for in K.S.A. 44-510c and amendments thereto. If there is an award of permanent disability as a result of the injury there shall be a presumption that disability existed immediately after the injury and compensation is to be paid for not to exceed the number of weeks allowed in the following schedule:

.....
 (13) For the loss of an arm, excluding the shoulder joint, shoulder girdle, shoulder musculature or any other shoulder structures, 210 weeks, and for the loss of an arm, including the shoulder joint, shoulder girdle, shoulder musculature or any other shoulder structures, 225 weeks.

.....
 (23) Loss of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the fourth

edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

K.S.A. 44-510e(a) states in part:

Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d and amendments thereto. The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein. An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

ANALYSIS

1. Nature and Extent of Disability

Both K.S.A. 44-510d(a)(23) and K.S.A. 44-510e(a) state that the percentage of functional impairment for a scheduled injury is to be determined using the 4th edition of the *AMA Guides* "if the impairment is contained therein." The Kansas Court of Appeals has provided guidance by writing, "an impairment rating must comply with the *AMA Guides, 4th Edition*, to be considered in determining the claimant's disability."⁵ Additionally, the Court of Appeals has stated that the Board could properly decide to discredit or not consider such evidence if the record does not conclusively demonstrate the prior functional impairment analysis was based on the *AMA Guides*.⁶

⁵ *Rash v. Heartland Cement Co.*, 37 Kan. App. 2d 175, 154 P.3d 15 (2006); see also *Pierce v. L7 Corporation/Wilcox Painting*, No. 103,143, unpublished Kansas Court of Appeals opinion, slip op. at 7, 2010 WL 3732083 (filed September 17, 2010).

⁶ *Billionis v. Superior Industries*, Docket No. 1,037,974, 2011 WL 4961951 (Kan. WCAB Sept. 15, 2011); see also *Watson v. Spiegel, Inc.*, No. 85,108, unpublished Court of Appeals opinion filed June 1, 2001, slip. op. at 12.

The Board has, in the past, excluded a physician's impairment rating based upon a failure of the impairment ratings to comply with the *AMA Guides*. For example, the Board excluded the opinions of two physicians because both failed to refer to the specific table containing the criteria for the rating.⁷

In this case, the ALJ relied upon the independent medical examination report of Dr. Prostic to arrive at the conclusion that claimant suffered a permanent whole body impairment as the result of the work-related injuries. In his report, Dr. Prostic wrote that he used the *AMA Guides*, but he did not indicate which edition was used for this particular examination. Neither the ALJ's order for an independent examination nor the attorneys' letter to Dr. Prostic specified that the 4th Edition of the *AMA Guides* were to be used to determine the impairment rating. Dr. Prostic maintains an office in Johnson County, Kansas and conducts evaluations using different versions of the *AMA Guides* depending on the jurisdiction. The Board cannot presume that Dr. Prostic used the 4th Edition of the *AMA Guides*. Based upon the failure of Dr. Prostic to identify the edition of the *AMA Guides* used as a basis for his opinions, Dr. Prostic's rating report fails to comply with K.S.A. 44-510d(a)(23) and K.S.A. 44-510e(a) and will be given no weight by the Board.

Without considering Dr. Prostic's IME report, there is no showing of a whole body injury related to this injury. Dr. Stull opined that claimant experienced a 2 percent impairment to the left shoulder. Dr. Stull was not able to cite the portions of the *AMA Guides* from which he drew his ratings. Based upon his testimony, it appears that Dr. Stull has limited experience utilizing the *AMA Guides*.

The only physician that presented competent evidence with regard to permanent impairment was Dr. Bieri. Dr. Bieri had the benefit of examining claimant prior to and after this work-related injury. Dr. Bieri examined claimant on April 12, 2006; March 25, 2010; and February 20, 2012. After his last examination of claimant, Dr. Bieri assessed a 16 percent impairment of the left upper extremity as the result of the March 29, 2009 injury.

Based upon an examination on April 12, 2006, Dr. Bieri provided a rating for claimant's cervical spine. At that time, he assessed a 5 percent whole body impairment based upon the *AMA Guides*, "DRE Cervicothoracic Category II, with reference to page 104."⁸ In the report prepared from the March 25, 2010, examination of claimant, Dr. Bieri again assessed a 5 percent based upon "DRE Cervicothoracic [Category] II, with reference to page 104."⁹ Finally, as a result of the February 20, 2012, examination, Dr. Bieri

⁷ *Dula v. Advanced Drilling Technologies, LLC*, Docket No. 1,034,957, 2011 WL 1747789 (Kan. WCAB Apr. 19, 2011).

⁸ Bieri Depo., Ex. 4 at 5.

⁹ *Id.*, Ex. 3 at 5.

assessed a 5 percent impairment, again based upon “DRE Cervicothoracic [Category] II, with reference to page 104.”¹⁰

Based upon the written reports and testimony of Dr. Bieri, the Board finds that claimant does not suffer any new whole body impairment as the result of his work-related accident on March 29, 2009, injury.

2. Stormont-Vail Bill

Respondent has asked the Board to reverse the ALJ’s order requiring them to pay for a period of hospitalization related to an evaluation of claimant’s mental state. The hospitalization was precipitated by claimant’s statements to Dr. Hendler suggesting he wanted to commit suicide. Dr. Hendler then sent claimant to the Stormont-Vail emergency room. Claimant stated he told Dr. Hendler the reason he wanted to kill himself was because of the pain he went through every day and that respondent put more pressure on him. Claimant was placed on antidepressants after the hospitalization and continued to take them at the time of the regular hearing.

Claimant testified he was in the hospital four days, was given medication and received counseling. The Stormont-Vail bill totaled \$6,961.11, a portion of which was paid by private insurance. The remaining balance is \$2,009.60.

The Kansas Court of Appeals held:

In order to establish a compensable claim for traumatic neurosis under the Kansas Workers’ Compensation Act, K.S.A. 44-501 *et. seq.*, the claimant must establish: (a) a work-related physical injury; (b) symptoms of the traumatic neurosis; and (c) that the neurosis is directly traceable to the physical injury.¹¹

In order for respondent to be liable for payment, the claimant must show he was treated for a psychiatric or psychological condition directly traceable to the physical injury. Claimant provided no medical evidence in support of the claim for payment of the bill. The closest thing to medical evidence in support of the claim for payment was the testimony of Dr. Stull, who testified generically that depending on the circumstances, it would be reasonable for someone to have depression from an injury and surgery.

The Board finds claimant has failed to meet the burden of proof required to show that the hospitalization was related to depression directly traceable to the physical injury.

¹⁰ *Id.*, Ex. 2 at 2.

¹¹ *Love v. McDonald’s Restaurant*, 13 Kan. App. 2d 397, Syl. ¶ 2, 771 P.2d 557, *rev. denied* 245 Kan. 784 (1989); see *Boutwell v. Domino’s Pizza*, 25 Kan. App. 2d 110, 959 P.2d 469, *rev. denied* 265 Kan. 884 (1998); *Adamson v. Davis Moore Datsun, Inc.*, 19 Kan. App. 2d 301, 308, 868 P.2d 546 (1994).

3. Retirement offset

Respondent has requested a retirement benefit reduction under K.S.A. 2008 Supp. 44-501(h), which provides:

If the employee is receiving retirement benefits under the federal social security act or retirement benefits from any other retirement system, program or plan which is provided by the employer against which the claim is being made, any compensation benefit payments which the employee is eligible to receive under the workers compensation act for such claim shall be reduced by the weekly equivalent amount of the total amount of all such retirement benefits, less any portion of any such retirement benefit, other than retirement benefits under the federal social security act, that is attributable to payments or contributions made by the employee, **but in no event shall the workers compensation benefit be less than the workers compensation benefit payable for the employee's percentage of functional impairment.** (Emphasis Added)

As the Board has found that claimant is entitled to compensation for a functional impairment pursuant to K.S.A. 44-510d(a)(13), the K.S.A. 2008 Supp. 44-501(h) reduction does not apply.

CONCLUSION

Based upon the foregoing, the Board finds:

1. Claimant suffers a 16 percent permanent partial impairment to the left upper extremity at the level of the shoulder.
2. Claimant failed to meet the burden of proof required to show that the hospitalization at Stormont-Vail was related to depression directly traceable to the work-related physical injury.
3. Dr. Prostic's rating fails to comply with K.S.A. 44-510d(a)(23) and K.S.A. 44-510e(a).
4. Respondent is not entitled to an offset for the receipt of social security payments pursuant to K.S.A. 44-501(h).
5. Based on the foregoing, all other issues are moot.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Brad E. Avery dated October 18, 2012, is modified with respect

to the nature and extent of disability and respondent’s liability for the Stormont-Vail bill. The Award is affirmed in all other respects.

Claimant is entitled to 6 weeks of temporary total disability compensation at the rate of \$500.67 per week in the amount of \$3,004.02 followed by 35.04 weeks of permanent partial disability compensation, at the rate of \$500.67 per week, in the amount of \$17,543.48 for a 16 percent loss of use of the left shoulder, making a total award of \$20,547.50.

IT IS SO ORDERED.

Dated this _____ day of April, 2013.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

The undersigned Board Members dissent from the finding of the majority that respondent is not required to pay claimant’s medical expense for hospitalization at Stormont-Vail. The majority adopted the opinions of Dr. Bieri with regard to claimant’s functional impairment. The majority should also adopt the opinion of Dr. Bieri with regard to payment of the Stormont-Vail medical expense. Dr. Bieri was asked to read claimant’s testimony at pages 12 through 16 and lines 10 through 16 on page 17 of the regular hearing transcript. Claimant testified he reached a level of depression that made him suicidal because of the pain he was going through and pressure from respondent. Dr. Bieri then gave the following testimony:

Q. [claimant’s attorney] So you wouldn’t be able to address whether Mr. Alaniz within a reasonable degree of medical certainty, that this (psychiatric treatment at Stormont-Vail) was more than likely related to his pain as to some other factor?

A. [by Dr. Bieri] Based on what you have provided here, and again assuming that Dr. Hendler did indeed send the claimant for such care, it would be.

Q. It would be related?

A. Yes.¹²

The undersigned Board Members adopt the legal analysis of ALJ Avery. Dr. Hendler sent claimant to Stormont-Vail for treatment that was reasonably necessary to cure and relieve claimant from the effects of his injury. Therefore, pursuant to K.S.A. 2008 44-510h(a), respondent should be liable to pay claimant's Stormont-Vail medical expense.

BOARD MEMBER

BOARD MEMBER

c: Sally G. Kelsey, Attorney for Claimant
strolelawclerk@gmail.com

Edward D. Heath, Attorney for the Self-Insured Respondent
heathlaw@swbell.net

Brad E. Avery, Administrative Law Judge

¹² Bieri Depo. at 12-13.